

ultimately the conclusion of the tribunal would have been the same.”⁸²² Finally, materiality is a factual issue for the jury.⁸²³

The question of whether Babbitt and Ickes communicated on the Hudson decision was of paramount importance to the Committee.⁸²⁴ In October 1997, and still today, there was insufficient evidence to prove that there was any such communication between Babbitt and Ickes. However, what Babbitt said to Eckstein about Ickes’s involvement with the Hudson application was of enormous importance to the Committee’s attempt to determine whether Babbitt and Ickes had communicated on the Hudson matter. This is particularly true in light of the fact that both Babbitt and Ickes denied they had communicated about the Hudson matter when the evidence at the time – both Eckstein’s sworn testimony and documented contacts between the White House and Interior – indicated that they may have communicated about it.

Babbitt’s testimony about the terms used in his conversation with Eckstein had the potential to influence the proceedings in the Senate Committee hearings because they were highly probative of whether such a communication did in fact occur. Indeed, a main purpose of

⁸²²*DeZarn*, 157 F.3d at 1051.

⁸²³*See United States v. Gaudin*, 515 U.S. 506, 509 (1995).

⁸²⁴Even the Secretary’s attorneys have conceded that whether Ickes spoke to Babbitt about Hudson at the behest of campaign contributors was material to the Committee’s work. As Sen. Levin commented during the hearing:

I think it’s perfectly appropriate that you be called as a witness in light of your comment relative to Mr. Ickes. I think that does raise a question which appropriately should be addressed by you, so I think it’s very appropriate indeed that you be given an opportunity to address that question.

Babbitt Senate Test. at 259.